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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,950

05/16/2005

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Nisshin-2(FP254US)

1677

7265 7590 07/09/2008

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EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

07/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/534,950	Applicant(s) SAITO ET AL.	
	Examiner Brent T. O'Hern	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/16/2005, 9/15/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-9 in the reply filed on 13 June 2008 is acknowledged.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liao (WO 90/05460) in view of Qiang, *The production of Starch modified by alkenyl succinic anhydrides and its use in food industry* (2000), see Applicant's IDS filed 9/15/2006.

Liao ('460) teaches an acidic emulsified mayonnaise-like food without eggs, where the content of protein is less than 0.5% by mass, edible oil, vinegar, salt, polysaccharides, and seasonings (*See p. 4, l. 3 to p. 6, l. 26.*), however, fails to expressly disclose an esterified compound composed of a starch or a hydrolysate thereof and an alkenylsuccinic acid, wherein the content of the esterified compound is 0.1 to 5.0% by mass of the total mass of the acidic emulsified mayonnaise-like food, and a thickening polysaccharide being 0.01 to 2.5% by mass of the total mass of the acidic emulsified

mayonnaise-like food, wherein the mass ratio of the esterified compound to the thickening polysaccharide is from 2:1 to 10:1.

However, Qiang teaches using an octenyl succinate starch which is an esterified compound comprising a starch or hydrosate and an alkenylsuccinic acid at 1% and xanthan gum at 0.05% in salad dressings for the purpose of improving the dispersion of the substances in the product, emulsion stability, appearance and taste (*See entire document.*). Regarding the mass ratio of claim 5, said ratio is typical and obtainable through routine optimization for a person having ordinary skill in the art.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to use the above starch and gum as taught by Qiang in Liao ('460) and the above ratios in order to provide a food substance having improved stability, appearance and taste.

3. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liao (WO 90/05460) in view of Qiang, *The production of Starch modified by alkenyl succinic anhydrides and its use in food industry* (2000) and Chen et al., *Preparation of Starch Sodium Alkenyl Succinate* (2000), see Applicant's IDS filed 9/15/2006.

Liao ('460) and Qiang teach the food product discussed above, however, fail to expressly disclose wherein the esterified compound is an esterified compound composed of potato starch or a hydrolysate thereof and an alkenylsuccinic acid and has a degree of substitution of ester groups from 0.005 to 0.020.

However, Chen teaches using cornstarch to prepare alkenyl succinate starch with a degree of substitution of ester groups of 0.018, 0.017, 0.007, etc. for the purpose of providing a thickened food (*See entire document.*). Furthermore, cornstarch and potato

starch have similar compositions and structures and thus are substantially interchangeable.

Therefore, it would have been obvious to use a starch with the substitution as taught by Chen in Liao ('460) in order to provide a thickened food.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brent T O'Hern/
Examiner, Art Unit 1794
June 29, 2008

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/Elizabeth M. Cole/

Primary Examiner, Art Unit 1794